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REAL PROPERTY PURCHASE AND SALE AGREEMENT

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT ("Agreement") is entered into effective as of _____, 2005 ("Effective Date"), by and among the Barton P. and Kathleen A. Simmons Revocable Inter Vivos Trust ("Seller"), and the City of Milpitas Redevelopment Agency, a public body, corporate and politic ("Buyer"), for sale by Seller to Buyer and purchase by Buyer from Seller of certain real property as hereinafter set forth.

Recitals

This Agreement is entered into upon the basis of the following facts, understandings and intentions of the parties:

A. Seller is the owner of that certain real property located on North Main Street, Milpitas, California, further described as Assessor's Parcel No. 022-08-003, and more particularly described in the attached Exhibit A, together with all improvements, structures, buildings and fixtures thereon ("Real Property").

B. Buyer desires to purchase the Real Property from Seller, and Seller desires to sell the Real Property to Buyer on the terms and conditions of this Agreement.

C. Buyer is a redevelopment agency existing pursuant to the Community Redevelopment Law, California Health and Safety Code Section 33000, et seq. Pursuant to its authority granted thereunder, Buyer has the responsibility to carry out the Redevelopment Plan for the Project Area No. 1 Redevelopment Project Area ("Redevelopment Plan").

D. The Real Property is located in an area governed by the Redevelopment Plan. The purchase of the Real Property as provided for in this Agreement is consistent with and furthers the goals and objectives of the Redevelopment Plan.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants, promises and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Agreement to Sell and Purchase. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions and for the consideration set forth in this Agreement, the Real Property.

2. Earnest Money Deposit. Upon the opening of escrow and in no event later than seven (7) days after the Effective Date, Buyer shall deposit Five Thousand Dollars (\$5,000) ("Earnest Money Deposit") into escrow in an interest bearing account for the benefit of the Buyer. The Earnest Money Deposit, and all interest thereon, shall be credited to Buyer and applied to the Purchase Price (defined below) at the close of escrow.

3. **Purchase Price.** The purchase price that Buyer shall pay Seller for the Real Property shall be one million, nine hundred seventy-nine thousand, seven hundred seventy-five United States dollars (\$1,979,775.00), [\$45.00 per square foot multiplied by 43,995 square feet] ("Purchase Price"). The Purchase Price, less the amount of the Earnest Money Deposit and any interest thereon, shall be paid by Buyer at the close of escrow in accordance with the terms of this Agreement.

4. **Escrow.** Within five (5) days of the Effective Date, the parties shall open an escrow to consummate the purchase and sale of the Real Property pursuant to this Agreement at the office of _____ Title Company located at _____

("Title Company" or "Escrow Agent").

Upon the opening of escrow, the parties shall deposit with the Escrow Agent an executed copy of this Agreement. The parties shall deliver signed instructions to the Escrow Agent within seven (7) days of the opening of escrow. The instructions shall not modify or amend this Agreement; provided, however, that the parties shall execute any additional instructions requested by the Escrow Agent in a manner consistent with this Agreement. All amounts deposited by the parties with the Escrow Agent, including the Earnest Money Deposit, shall be held in escrow in an interest-bearing account.

5. **Title Documents.** Within ten (10) days of the opening of escrow, Buyer shall obtain and Buyer shall deliver or cause to be delivered to Seller a preliminary report for a CLTA Owner's Title Insurance Policy ("Preliminary Report") on the Real Property issued by the Title Company, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters affecting Seller's title to the Real Property, together with copies of all documents relating to exceptions referred to in the Preliminary Report and complete and legible copies of all instruments referred to in the Preliminary Report, as requested by Buyer. Buyer shall have twenty (20) days from the receipt of the Preliminary Report to report in writing any objections to it. Any exceptions to title to the Real Property shown in the Preliminary Report shall be deemed to be accepted by Buyer unless objected to in writing by Buyer to Seller within said twenty (20) days.

If Buyer objects to an "exception" to the title to the Real Property, Seller shall have the option at Seller's sole discretion, to use its best efforts at Seller's expense to remove from title or otherwise satisfy the "exception" at least fourteen (14) days prior to the close of escrow, and in a form that is reasonably satisfactory to Buyer, or decline to satisfy the exception and terminate this Agreement upon written notice to Buyer. However, Buyer shall have the option to terminate all rights or obligations under this Agreement or accept title subject to those exceptions, if any, Seller does not remove from title. Alternatively, Buyer may elect, upon written notice to Seller, to purchase the Real Property subject to the exceptions. Notwithstanding Buyer's election to purchase the Real Property subject to the exceptions, if the exceptions are unable to be or are not discharged, satisfied, released or terminated before the close of escrow, all rights and obligations under this Agreement may, at the election of Buyer and upon written notice to Seller, terminate, and the Earnest Money Deposit, including interest thereon, and all other funds and documents deposited with Escrow Agent by or on behalf of Buyer shall be returned to Buyer.

Within five (5) days after Buyer has approved the Preliminary Report pursuant to this Section, and in no event later than seven (7) days prior to the close of escrow, Title Company shall deliver to Buyer a title commitment for a CLTA Owner's Title Insurance Policy ("Title Policy") in the full amount of the Purchase Price and for the benefit and protection of Buyer issued by Title Company and showing the status of the title to the Real Property and all exceptions, as such title and exceptions will appear upon the close of escrow, including encumbrances, liens, adverse claims, easements, restrictions, rights-of-way, covenants, reservations and all other conditions, if any, affecting the Real Property which would appear in the Title Policy, and committing Title Company to issue the Title Policy to Buyer upon the close of escrow.

6. Closing: Documents. Seller. Within forty (40) days after opening of escrow, Seller shall: (i) deposit into escrow a Grant Deed in a recordable form, in the form attached as Exhibit B ("Grant Deed"), duly executed and acknowledged, conveying to Buyer good and marketable fee simple title to the Real Property, subject only to exceptions approved pursuant to this Agreement; (ii) deposit into escrow Seller's affidavit of non-foreign status executed by Seller under penalty of perjury as contemplated by 26 United States Code Section 1445, and (iii) Seller's written certificate executed by Seller under penalty of perjury as contemplated by California Revenue and Taxation Code Section 18662 certifying that Seller is a resident of California; and (iv) execute, deposit and deliver such additional instruments and documents as the Escrow Agent may reasonably require to consummate the transaction which is the subject of this Agreement.

Buyer. Within forty (40) days after opening of escrow, Buyer shall: (i) deposit into escrow monies in the amount necessary to pay all title insurance and title report costs, escrow fees, and recording fees; and (ii) execute, deposit and deliver such additional instruments and documents as the Escrow Agent may reasonably require to consummate the transaction which is the subject of this Agreement. On or before the date of the close of escrow, Buyer shall deposit into escrow immediately available funds which along with the Earnest Money Deposit, plus interest thereon, are in an amount sufficient to make the total consideration equal the Purchase Price.

This Agreement, together with the parties' escrow instructions, shall constitute the instructions for closing escrow.

7. Close of Escrow. Unless the parties mutually agree in writing to an extension or terminate the Agreement for the reasons set forth in this Agreement, escrow shall close, the Real Property shall be transferred from Seller to Buyer, and the Purchase Price, less any transfer or conveyance taxes, shall be paid to Seller on the date which is the forty-fifth (45th) day after opening of escrow, but no sooner than January 1, 2005. The Escrow Agent shall close escrow by: (i) recording the Grant Deed conveying the Real Property from Seller to Buyer in the official records of Santa Clara County, California; (ii) issuing the Title Policy and delivering same to Buyer; (iii) delivering to Seller the monies constituting the Purchase Price and a certified copy of the Grant Deed; and (iv) delivering to Buyer a certified copy of the Grant Deed. The parties expressly agree that escrow shall close on the property after January 1, 2005.

8. Title. Simultaneously with the close of escrow, Title Company shall issue the Title Policy in the amount of the Purchase Price for the benefit and protection of Buyer. Upon the close of escrow, Seller shall by the Grant Deed convey to Buyer a fee simple interest in the Real Property, free and clear of all title defects, liens, encumbrances, deeds of trust, and mortgages, excepting therefrom: (i) the provisions and effect of the Redevelopment Plan; and (ii) assessments, conditions, covenants, restrictions, encumbrances, liens, easements and exceptions approved by Buyer pursuant to Section 5. Title to the Real Property upon conveyance to Buyer shall be evidenced by the Title Policy, subject to the exceptions listed in this Section.

9. Closing Costs. Buyer shall pay all title insurance and title report costs, escrow fees (including the costs of preparing documents and instruments), and recording fees. Governmental conveyance fees and transfer taxes, if any, shall be paid for solely by Buyer. Seller shall be responsible for paying all costs of removing exceptions from title to the Real Property prior to the close of escrow, except for those exceptions to title approved by Buyer pursuant to paragraph 5, above.

10. Prorations. At the close of escrow, the Escrow Agent shall make the following prorations: (i) property taxes, if any, shall be prorated as of the date of close of escrow based on the most current real property tax bill available, including any additional property taxes which may be assessed after the close of escrow but that pertain to the period prior to the transfer of title to the Real Property to Buyer, regardless of when notice is delivered or who receives the notice; and (ii) any bond or assessment that constitutes a lien on the Real Property at the close of escrow shall be assumed or taken subject to by Buyer.

11. Buyer's Conditions to Closing. The close of escrow and Buyer's obligation to purchase the Real Property pursuant to this Agreement are conditioned on: (i) the performance by Seller of each obligation to be performed by Seller under this Agreement within the applicable time period, or waiver by Buyer of said obligation; (ii) Seller's representations and warranties contained in this Agreement being true and correct as of the Effective Date and the close of escrow; and (iii) Title Company being prepared to issue and deliver the Title Policy on the close of escrow, subject only to the exceptions approved by Buyer in accordance with this Agreement.

Should any of the conditions fail to occur by the dates specified, excepting any such conditions that have been waived by Buyer, Buyer shall have the right, exercisable by giving written notice to Seller, to cancel the escrow, terminate this Agreement, and recover any and all amounts paid by Buyer to Seller or deposited with the Escrow Agent by or on behalf of Buyer, including the Earnest Money Deposit and interest thereon. The exercise of this right by Buyer shall not constitute a waiver by Buyer of any other rights Buyer may have at law or in equity.

12. Buyer's Additional Conditions to Closing. The close of escrow and Buyer's obligation to purchase the Real Property pursuant to this Agreement are also conditioned on Buyer's inspection, examination, survey and review of the condition of the Real Property as described in subsections (a) and (b) below in this Section ("Due Diligence Conditions") during the Due Diligence Period (defined below) and Buyer's subsequent written approval of the Due Diligence Conditions within five (5) days of the end of the Due Diligence Period. The "Due

Diligence Period" shall be the period commencing on the Effective Date and ending on the thirtieth (30th) day after the opening of escrow.

- (a) **Feasibility Studies.** During the Due Diligence Period, Buyer may inspect, examine, survey and review the Real Property for its feasibility for Buyer's intended use, including, without limitation, the physical condition of the Real Property. Buyer may consult or retain civil engineers, contractors, soils and geologic engineers, architects and other specialists in the investigation of Hazardous Materials in, on or under the Real Property, and may consult or retain other consultants to determine if the Real Property is suitable for Buyer's intended use. Notwithstanding any contrary provisions contained in this Agreement, Buyer may elect to terminate this Agreement based on information contained in feasibility/suitability studies or reports prepared by or on behalf of Buyer or based on information contained in studies or reports provided by Seller.
- (b) **Other matters.** During the Due Diligence Period, Buyer may inspect, examine, survey and review any other matters with regard to the Real Property, including, without limitation, any and all studies or reports provided by Seller, lease documents or rental agreements, the compliance by the Real Property with all laws applicable now and in the future, and existing obligations relating to the Real Property. Notwithstanding any contrary provisions contained in this Agreement, Buyer may elect to terminate this Agreement based on information obtained during Buyer's investigation of the Real Property or based on information contained in studies or reports provided by Seller. During the Due Diligence Period, Buyer shall have the right to perform due diligence regarding the investigation, assessment, and monitoring of the environmental condition of the Real Property, and upon completion of the due diligence period, unless Buyer elects to terminate this Agreement pursuant to the terms hereof, the Buyer will purchase the Real Property in its "AS IS" condition as such property condition exists on the date of escrow closing.

Should Buyer fail to approve in writing the Due Diligence Conditions by the date specified, excepting any such condition that has been waived by Buyer, Buyer shall have the right, exercisable by giving written notice to Seller, to cancel the escrow, terminate this Agreement, and recover any and all amounts paid by Buyer to Seller or deposited with the Escrow Agent by or on behalf of Buyer, including the Earnest Money Deposit and interest thereon. The exercise of this right by Buyer shall not constitute a waiver by Buyer of any other rights Buyer may have at law or in equity.

13. Studies, Reports and Investigations. Throughout the Due Diligence Period, Seller agrees to immediately make available to Buyer any and all studies, reports and investigations concerning the Real Property which are in Seller's possession, including without limitation studies, reports and investigations concerning the Real Property's physical condition, habitability, the presence or absence of Hazardous Materials (as defined in attached Exhibit C) in, on or under the Real Property and the compliance by the Real Property with Environmental Laws (as defined in attached Exhibit C). Throughout the Due Diligence Period and without warranty of any kind

as to the accuracy, completeness or thoroughness of any report, investigation or study, Seller further agrees to immediately disclose to Buyer all information in Seller's possession concerning the Real Property's physical condition, habitability, the presence or absence of Hazardous Materials in, on or under the Real Property and the compliance by the Real Property with Environmental Laws.

14. Right of Entry. During the Due Diligence Period, Buyer and Buyer's agents shall have the right, upon reasonable notice to Seller, to enter upon the Real Property for purposes of conducting Buyer's inspection, examination, survey and review of the Real Property in accordance with Sections 12 and 13. Buyer's inspection, examination, survey and review of the Real Property shall be at Buyer's sole expense. Buyer shall obtain Seller's advance consent in writing to any proposed physical testing of the Real Property by Buyer or Buyer's agents, which consent shall not be unreasonably withheld or delayed if the purpose of such physical testing is consistent with this Agreement. Buyer shall repair, restore and return the Real Property to its original condition after the undertaking of any such physical testing, at Buyer's sole expense. Buyer shall schedule any such physical tests during normal business hours unless otherwise approved by Seller. Buyer agrees to indemnify Seller and hold Seller harmless from and against all liability, loss, cost, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) resulting from Buyer's or Buyer's agents entry upon the Real Property, except to the extent that such liability, loss, cost, damage and expense arises as a result of the negligence or other wrongful conduct of Seller or its agents. Buyer shall obtain and pay all costs associated with inspections, reports, and investigations obtained by or at the request of Buyer.

15. Seller's Conditions to Closing. The close of escrow and Seller's obligation to sell the Real Property pursuant to this Agreement are conditioned on: (i) the performance by Buyer of each obligation to be performed by Buyer under this Agreement within the applicable time period, or waiver by Seller of said obligation; and (ii) Buyer's representations and warranties contained in this Agreement being true and correct as of the Effective Date and the close of escrow.

16. Possession. Seller shall deliver possession of the Real Property to Buyer upon the close of escrow.

17. Seller's Warranties. Seller hereby agrees, represents and warrants, to the best of Seller's knowledge (which means the actual knowledge after reasonable inquiry of Kathleen A. Simmons) that as of the Effective Date and as of the close of escrow: (i) except as disclosed to Buyer, Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Real Property are or have been in violation of any Environmental Law or informing Seller that the Real Property is subject to investigation or inquiry regarding Hazardous Materials on the Real Property or the potential violation of any Environmental Law; (ii) except as disclosed to Buyer, Seller has not received any notice from any governmental authority of any threatened or pending zoning, building, fire, or health code violations or violations of other governmental regulations concerning the Real Property that have not previously been corrected, and no condition on the

Real Property violates any health, safety, fire, environmental, sewage, building, or other federal, state or local law, ordinance or regulation; (iii) except as disclosed to Buyer, no contracts, licenses, leases or commitments regarding the maintenance or use of the Real Property or allowing any third party rights to use the Real Property are in force; (iv) there are no threatened or pending actions, suits, administrative proceedings against or affecting the Real Property or any portion thereof or the interest of Seller in the Real Property; (v) there are no other threatened or pending condemnation, eminent domain, or similar proceedings affecting the Real Property or any portion thereof; (vi) Seller has not received any notice from any insurer of defects of the Real Property which have not been corrected; (vii) except as disclosed to Buyer, there are no natural or artificial conditions upon the Real Property or any part thereof that could result in a material and adverse change in the condition of the Real Property; (viii) any information that Seller has delivered to Buyer, either directly or through Seller's agents, is accurate and complete to the best of Seller's knowledge; and, (ix) to the best of Seller's knowledge, Seller has disclosed all material facts with respect to the Real Property.

18. Seller's Covenants. From the Effective Date and through the close of escrow, Seller shall: (i) not permit any liens, encumbrances, or easements to be placed on the Real Property, other than exceptions approved by Buyer pursuant to this Agreement, nor shall Seller enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Real Property that would be binding on Buyer or the Real Property after the close of escrow without the prior written consent of Buyer, (ii) not permit any act of waste or act that would tend to diminish the value of the Real Property for any reason, except that caused by ordinary wear and tear; and (iii) shall maintain and manage the Real Property substantially in accordance with Seller's established practices and shall maintain and manage the Real Property in the same condition, as of the Effective Date, ordinary wear and tear excepted.

19. Authority of Parties. Seller warrants that this Agreement and all other documents delivered prior to or at the close of escrow: (i) have been authorized, executed, and delivered by Seller; (ii) are binding obligations of Seller; (iii) are collectively sufficient to transfer all of Seller's rights to the Real Property; and (iv) do not violate the provisions of any agreement to which Seller is a party. Buyer warrants that this Agreement and all other documents delivered prior to or at the close of escrow: (i) have been authorized, executed, and delivered by Buyer; (ii) are binding obligations of Buyer; and (iii) do not violate the provisions of any agreement to which Buyer is a party. Each of the parties to this Agreement represents and warrants that the persons who have executed this Agreement have been authorized to do so by the party on whose behalf the party is signing, that each party has a good and legal right to enter into this Agreement and to perform all of its terms and conditions, and that on execution of this Agreement this Agreement shall be valid and enforceable.

20. Damage and Destruction. In the event of any damage or other loss to the Real Property, or any portion thereof, caused by fire or other casualty prior to the close of escrow, Buyer shall not be entitled to terminate this Agreement, but shall be obligated to close the escrow and purchase the Real Property as provided in this Agreement, without abatement in the Purchase Price, provided that Seller shall: (i) assign and transfer to Buyer at the close of escrow all of Seller's right, title and interest in and to all monies to be paid by Seller's insurer(s) in

connection with the damage or loss and all claims for monies payable from Seller's insurer(s) in connection with the damage or loss and (ii) pay to Buyer at the close of escrow the amount of Seller's deductible under the insurance policy or policies covering the damage or loss.

21. Brokers. Each party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement. Each party agrees to defend, indemnify and hold harmless the other party from any claims, expenses, costs or liabilities arising in connection with real estate commissions, brokerage fees, and finder's fees which may arise from this Agreement and be incurred by the other party.

22. Assignment. Buyer shall have the right to assign all rights and obligations under this Agreement to any party and no approval by Seller of any such assignment shall be necessary.

23. Notices. All notices, demands, requests, and other communications between Seller and Buyer under this Agreement made by either party shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested (in which case notice shall be deemed delivered three (3) business days after the date sent), or delivered personally (in which case notice shall be deemed delivered on the date of such delivery), addressed as follows:

Buyer: The Redevelopment Agency of the City of Milpitas
 455 E. Calaveras Boulevard
 Milpitas, CA 95035
 Attention: Executive Director

with a copy to
Buyer's counsel: Meyers, Nave, Riback, Silver & Wilson
 555 12th Street, Suite 1500
 Oakland, CA 94607
 Attention: Steven T. Mattas, Agency Counsel

Seller: Kathleen A. Simmons
 10 Boulevard Court
 Walnut Creek, CA 94595

Such written notices, demands, requests and other communications may be sent or delivered to such other addresses as the affected party may from time to time designate by giving notice to the other party. Notice of a change of address shall not be effective unless and until such notice is sent or delivered in accordance with this Section.

24. Litigation Costs. If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of an

alleged breach or default in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs, in addition to any other relief to which the party may be entitled.

25. Waivers. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party.

26. Successors. This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assignees of the parties to this Agreement.

27. Provisions Not Merged With Deeds. None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by the Grant Deed transferring title to the Real Property from Seller to Buyer, and neither such Grant Deed nor any other document shall affect or impair the provisions, terms, representations, warranties and covenants of this Agreement. The provisions, terms, representations, warranties and covenants of this Agreement shall survive the close of escrow.

28. Construction. Headings at the beginning of each Section are solely for the convenience of the parties and are not part of and shall not be used to interpret this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it.

29. Action or Approval. Where action and/or approval by Buyer is required by this Agreement, it may act on and/or approve such matter by and through its Executive Director, unless the Executive Director determines in his or her discretion that Buyer's Board must undertake such action and/or approval, in which case the Executive Director shall refer such matter to the Board for consideration. The time periods afforded Buyer for any event, inspection, feasibility, due diligence, escrow closing or other wise shall not be extended by any such referral to Buyer's Board.

30. Entire Agreement. This Agreement including Exhibits A to C attached hereto contain the entire agreement between the parties and supersedes all previous or contemporaneous agreements, understandings, representations or statements between the parties respecting the purchase and sale of the Real Property.

31. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

32. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the

provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

33. Third Party Rights. Nothing in this Agreement is intended to or shall confer upon any person, other than the parties to this Agreement and their respective successors and assigns, any rights or remedies under this Agreement.

34. Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the parties as partners, co-venturers, or principal and agent with one another.

35. Conflicts of Interest. No member, official or employee of Buyer shall make any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

36. Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of Buyer shall be personally liable to Seller, or any assignee or successor in interest, in the event of any default or breach by Buyer or for any amount, which may become due to Seller or its assignee or successor in interest on any obligation under the terms of this Agreement.

37. Time of the Essence. Time is of the essence for each condition, term, obligation and provision of this Agreement.

38. Amendment. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

39. Exhibits. Exhibits A to C referred to in and attached to this Agreement are incorporated herein by this reference and made a part hereof.

40. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

41. Effective Date. The Effective Date of this Agreement shall be the date that this Agreement is approved by Buyer's Board.

42. Certificate of Acceptance. Pursuant to Section 27281 of the California Government Code, the Grant Deed from Seller to Buyer shall have a Certificate of Acceptance attached to it, which shall be in the form attached as Exhibit 2 to said Grant Deed.

43. Time for Performance. When the time for performance of any obligation under this Agreement is to be measured from another event, such time period shall include the day of the other event. If the day of the time for performance is not a regular business day, then the time for such performance shall be by the regular business day following such day.

44. Property Acquisition. Buyer acknowledges that purchase of this property is authorized by Resolution # _____, and its purchase of the subject property is under threat of, and in lieu of, acquiring the property through eminent domain.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BUYER:

CITY OF MILPITAS REDEVELOPMENT AGENCY

By: Executive Director

ATTEST:

By: _____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Agency Attorney

SELLER:

Barton P. and Kathleen A. Simmons Revocable
Inter Vivos Trust

Exhibit A

Description of Real Property

Exhibit B

Grant Deed

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

)
)
)

REDEVELOPMENT AGENCY OF
THE CITY OF MILPITAS
455 E. Calaveras Boulevard
Milpitas, CA 95035-5479

)
)
)

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged, the _____, Barton P. and Kathleen A. Simmons Revocable Inter Vivos Trust ("**Grantor**") hereby grants to the Redevelopment Agency of the City of Milpitas, a public agency ("**Grantee**") all that real property including the improvements and fixtures thereon located in the City of Milpitas, County of Santa Clara, State of California described in Exhibit A attached hereto and incorporated herein.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of _____, 2005.

GRANTOR

By: Barton P. and Kathleen A. Simmons Revocable
Inter Vivos Trust,

Exhibit A

PROPERTY

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated _____, 2005, from the Barton P. and Kathleen A. Simmons Revocable Inter Vivos Trust to the Redevelopment Agency of the City of Milpitas, a public agency, is hereby accepted on behalf of the Redevelopment Agency by its Executive Director pursuant to authority conferred by Resolution No. _____, adopted by the Redevelopment Agency on _____, 2005, and that the Redevelopment Agency consents to recordation of the Grant Deed by its duly authorized officer.

Dated _____, 2005

By: _____

Print Name: Charles Lawson
Acting Executive Director

ATTEST:

By: _____
Clerk

APPROVED AS TO FORM:

By: _____
Agency Counsel

EXHIBIT C
Definition of "Environmental Laws" and "Hazardous Materials"

Environmental Laws means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material (as defined subsequently in this Exhibit), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property), occupational or environmental conditions on, under, or about the Property, as now in effect, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 USCA §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) and the Solid Waste Disposal Act [42 USCA §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCA §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 USCA §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USCA §§ 1801 et seq.]; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [7 USCA §§ 136 et seq.]; the Clean Air Act (CAA) [42 USCA §§ 7401 et seq.]; the Safe Drinking Water Act (SDWA) [42 USCA §§ 300f et seq.]; the Surface Mining Control and Reclamation Act of 1977 (SMCRA) [30 USCA §§ 1201 et seq.]; the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA or EPCRTKA) [42 USCA §§ 11001 et seq.]; the Occupational Safety and Health Act of 1970 (OSHA) [29 USCA §§ 655, 657]; the California laws regarding the underground storage of hazardous substances [H & S C §§ 25280 et seq.]; the Hazardous Substance Account Act [H & S C §§ 25300 et seq.]; the California laws regarding hazardous waste control [H & S C §§ 25100 et seq.]; the Safe Drinking Water and Toxic Enforcement Act of 1986 [H & S C §§ 25249.5 et seq.]; the Porter-Cologne Water Quality Control Act [Water Code §§ 13000 et seq.], and any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance or regulation now in effect that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

Hazardous Materials includes without limitation:

- (a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant in CERCLA, RCRA, TSCA, HMTA, or under any other Environmental Law;
- (b) Those substances listed in the United States Department of Transportation (DOT) Table [49 CFR §172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302];
- (c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and
- (d) Any material, waste, or substance that is:
 - (i) a petroleum or refined petroleum product,
 - (ii) asbestos,
 - (iii) polychlorinated biphenyl,
 - (iv) designated as a hazardous substance pursuant to 33 USCA 1321 or listed pursuant to 33 USCA 1317,
 - (v) a flammable explosive, or (vi) a radioactive material.

City of Milpitas, California

Budget # _____
Refer # _____

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	390-2940	\$1,979,775	390-9104811	\$1,979,775
<input type="checkbox"/> Budget Transfer				

Explain the reason for the budget change:

The Redevelopment Agency has been in negotiations to purchase the vacant real property owned by the Barton P. and Kathleen A. Simmons Revocable Inter Vivos Trust located on North Main Street, further described as Assessor's Parcel No. 022-08-003, and more commonly known as the Cardoza property. The property is bounded by Calaveras Boulevard, North Main Street and the off ramp to Main Street from Calaveras Boulevard. This property is within Project Area No. 1. The Redevelopment Agency, pursuant to its authority granted under California Community Redevelopment Law (California Health and Safety Code §39000 et seq.), has the responsibility to carry out the Redevelopment Plan for the Project Area No. 1 Redevelopment Project Area. This proposed purchase is consistent with and furthers the goals and objectives of the Redevelopment Plan. The property would be used for a parking structure, retail uses and a possible community meeting room above the parking structure. The final use of the property will be subject to review by the City Council/Redevelopment Agency.

The purchase price is \$1,979,775. The Purchase Price, less the amount of the Earnest Money Deposit (\$5,000) and any interest will be paid by the Redevelopment Agency at the close of escrow in accordance with the terms of the Purchase and Sale Agreement.

Approve a budget appropriation of \$1,979,775 to purchase property for a parking structure, retail uses and a possible community meeting room above the parking structure.

☒ Check if City Council Approval required.

Meeting Date: January 4, 2005

Itemization of funds, if needed:			Amount
Requested by:	Division Head:	Date:	
	Department Head:	Date:	
Reviewed by:	Finance Director: <i>[Signature]</i>	Date: 12/29/04	
Approved by:	City Manager:	Date:	
Date approved by City Council, if required:		Confirmed by:	